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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,116	09/29/2003	Peter J. Dronzek JR.	181-030B	2428
47888	7590	06/27/2006	EXAMINER	
HEDMAN & COSTIGAN P.C. 1185 AVENUE OF THE AMERICAS NEW YORK, NY 10036			SCHATZ, CHRISTOPHER	
		ART UNIT	PAPER NUMBER	
		1733		

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/674,116	DRONZEK, PETER J.
	Examiner Christopher T. Schatz	Art Unit 1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 April 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 25-36 and 38-48 is/are pending in the application.
- 4a) Of the above claim(s) 48 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 25-36 and 38-47 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Election/Restrictions

1. Newly submitted claim 48 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as applying the adhesive to the container instead of the label.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 48 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 25-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 25 and 47 recite the limitation "selecting a microvoided polymeric label that will allow a water based adhesive to migrate into said microvoided polypropylene film." There is insufficient antecedent basis for this limitation in the claims. Applicant has failed to establish proper antecedent basis for the phase "said microvoided polypropylene film."

Claim 29 recites the limitation "a reactive catalyst crosslinkable with either the hydrophilic layer or the adhesive layer." There is insufficient antecedent basis for this limitation in the claim. Applicant has failed to establish proper antecedent basis for the phase "the adhesive layer." Additionally, it does not make sense that a separate adhesive layer is formed in the said water based adhesive migrates into the microvoided polymeric label as now recited by claim 25.

Claim 35 recites the limitation "a reverse printed clear polymeric film which is laminated to the low density polymeric label surface." There is insufficient antecedent basis for this limitation in the claim. Applicant has failed to establish proper antecedent basis for the phase "the low density polymeric label surface."

Double Patenting

4. Applicant's terminal disclaimer filed on April 13, 2006 has been approved. Examiner's double patenting rejection has been withdrawn.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 25-36, and 38-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dronzek (WO 99/19412) in view of Amberg '640.

Dronzek is available as prior art under 102(b) because (1) applicant only claims benefit to 10/292231 filed on November 11, 2002, and Dronzek was published more than one year prior to November 11, 2002.

The claims of Dronzek disclose the limitations in claims 25-36, and 38-47 of the instant application. The reference is silent, however, as to a method wherein a microvoided polymeric label is selected. Amberg discloses a method of labeling a container wherein a microvoided polymeric label is selected (column 5, lines 8-12). The reference further indicates that selecting a polymeric label with microvoids is preferable to the process, and that said polymeric label with said specified microvoids forms a sung, conforming fit around the neck of the container (column 9, lines 9-13). Therefore, at the time of the invention it would have been obvious to a person of ordinary skill in the art to modify the method disclosed by Dronzek by selecting a microvoided polymeric label as taught by Amberg above such that the process of Dronzek produces a label that is adhered in a sung, conforming manner.

7. Claims 25 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jannusch '884 in view of Amberg '640.

Jannusch is available as prior art under 102(b).

Jannusch discloses a method of labeling glass, plastic or metal container or surface by means of a water based adhesive composition (column 1, lines 60-65), said method comprising: selecting a polymeric label (column 8, lines 34-38); (b) applying a water based adhesive to said

polymeric label form a fastenable polymeric label; fastening said fastenable polymeric label glass, plastic or metal container or surface; and (d) allowing said polymeric label to cure on said glass, plastic or metal surface or container (column 7, lines 19-27). The reference is silent as to a method wherein the selected polymeric label is microvoided and comprises polypropylene.

Amberg discloses a method of labeling a container wherein a microvoided polypropylene label is selected (column 5, lines 8-12). The reference further indicates that selecting a polypropylene label with microvoids is preferable to the process, and that said polymeric label with said specified microvoids forms a sung, conforming fit around the neck of the container (column 9, lines 9-13). Amberg further discloses that said polypropylene label is foamed. Examiner asserts that because said label is foamed, a water based adhesive would necessarily migrate into at least a portion of said label. At the time of the invention it would have been obvious to a person of ordinary skill in the art to modify the method disclosed by Jannusch by selecting a microvoided polypropylene label as taught by Amberg above such that the process of Jannusch produces a label that is adhered in a sung, conforming manner.

8. Claims 25-36, 38, and 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jannusch and Amberg as applied above, and in further view of Navikas '898.

Jannusch and Amberg disclose a method as stated above, and Jannusch further discloses a method wherein an adhesive can further contain hydrophilic fortifying polymers to promote adhesion (column 1, lines 25-31, column 3, lines 36-51). The reference is silent, however, as to a method wherein a hydrophilic layer is applied to a polymeric label before application of a water based adhesive. Navikas discloses a method of adhering a label to a polymeric surface via a water-based adhesive. The reference further suggests that application of a hydrophilic layer to a

polymeric before application of a water based adhesive allows the polymeric surface to have better affinity for said water based adhesive. This in turn leads to a better bond between surfaces (column 1, lines 28-50). Examiner acknowledges that Navikas is referring to applying a hydrophilic layer to a polymeric bottle (not a label). However, applicant should note that the polymeric material used in the method of both Jannusch and Amberg, whether said material is polypropylene or polystyrene, is a hydrophobic material. Because the container of Navikas contains the same properties as label of Jannusch and Amberg, the advantages of applying a hydrophilic layer before a water based adhesive is applied disclosed by Navikas would pertain to the application of said hydrophilic layer even if said layer is applied to a hydrophobic polymeric label, rather than a hydrophobic polymeric container. Examiner acknowledges that both Navikas and Jannusch disclose polystyrene and are silent as to polypropylene, as recited in applicant's claim. Applicant should note that both Navikas and Jannusch disclose polystyrene as an *exemplary* polymeric material, and neither reference is limited to such. Further, Amberg discloses polystyrene and polypropylene as well recognized alternative materials for a label, and one of ordinary skill in the art would have readily recognized that the advantages of applying a hydrophilic layer to a polystyrene material before application of a water adhesive to said polystyrene material would pertain equally well to a polypropylene material since both materials are known to be hydrophobic. Applicant should further note that Navikas is considered analogous art because the reference is reasonably pertinent to the particular problem with which the inventor is concerned – the problem of increasing the affinity of a water based adhesive to a hydrophobic surface. MPEP 2145. At the time of the invention it would have been obvious to a person of ordinary skill in the art to modify the method disclosed by Jannusch and Amberg such

that a hydrophilic layer is applied to the polymeric label before the adhesive as taught by Navikas. Such a modification would increase the affinity of the water based adhesive to the label.

As to claims 27-36, 38, and 43-46, applicant is referred to section 8, pages 7-8 of the office action dated December 13, 2005 for a discussion as to why the reference meets the limitations of said claims.

9. Claims 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jannusch, Amberg and Navikas as applied above, and in further view of Kelly et al. for the same reasons as set forth in section 9 of examiner's office action dated December 13, 2005.

Response to Amendment

The Declaration under 37 CFR 1.132 filed has been considered but is insufficient to overcome the rejection of claims 25-47. The Declaration relates open celled and closed celled film, and shows how a water based adhesive migrates better into an open celled film. Applicant fails, however, to properly relate the Declaration to the claims as currently written. While it is clear from the declaration that more water based adhesive migrates into an open celled film than a closed cell film, applicant's claim *does not require* the material of the label be open celled. The claim only requires that *any* amount of water based adhesive migrate into the microvoided label. Thus, applicant's statements with respect to the Declaration are not commensurate with scope of applicant's claim.

Response to Arguments

Applicant's arguments filed April 13, 2006 have been fully considered. As to Amberg, applicant states that the label of Amberg has a closed cell structure and would not allow adhesive to migrate into the label. Examiner respectfully disagrees. Nowhere in the disclosure does Amberg state that the foamed material has a closed cell structure. The burden is on the applicant to prove otherwise. Furthermore, regardless of the specific cell structure of, that fact that the label is foamed necessarily means that at least some water-based adhesive will migrate into the label. Page 3 of applicant's own Declaration supports this statement. Applicant's claim does not require a specific *amount* of adhesive to migrate.

Applicant states that Jannusch does not disclose polypropylene. Examiner asserts that Amberg does disclose polypropylene and further discloses that polypropylene is an alternative to polystyrene and thus examiner asserts that it would have been obvious to use polypropylene as the polymeric material in place polystyrene as discussed in section 8 above. Applicant further states that Jannusch is specific to paper labels and there is no disclosure of a polymeric label with a density of less than 0.9 as claimed and claims 52-55. This statement is not commensurate with scope of applicant's claims because applicant's amendment does not contain claims 52-55, and none of applicant's new claims require a specific density. As to Amberg, examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the label of Jannusch by making said label a polypropylene microvoided label as taught by Amberg. Such a label used in the method of Jannusch would necessarily absorb at least some amount of the water based adhesive of Jannusch. It is not important what specific adhesive Amberg discloses. The advantage of using a microvoided polypropylene label would apply to the

method of Jannusch even though Jannusch uses a different adhesive than Amberg. The burden is on the applicant to prove otherwise.

With respect to Kelly, it is not necessary that Kelly disclose a specific a microvoided label because Amberg makes such a disclosure. Applicant is advised that one cannot show nonobviousness by attacking references individually and in a vacuum of each other as a rejection under 35 U.S.C. 103 is a consideration relating to the combined teachings of the references (and not each reference in a vacuum of the others).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

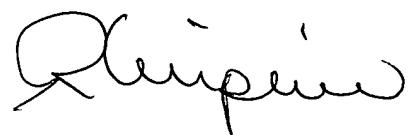
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher T. Schatz whose telephone number is 571-272-1456. The examiner can normally be reached on 8:00-5:30, Monday -Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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